In the High Court of Uttarakhand, at Nainital.

Modification/Clarification Appl. No. 4425/2004

In

W.P.No. 1433 (SS) /2003.

Bilal Ahmad and 12 others. …… Petitioners.

Vs.

State of Uttaranchal and two others …… Respondents.

Dated: 31-08-2004.

Hon'ble Rajesh Tandon, J.

Heard Sri N.S. Pundir leaned counsel for the petitioners and Sri Ramesh Chandra Arya, learned Standing Counsel for the respondents.

By the present modification/ clarification application the applicants have prayed that it may be clarified in the order that no artificial break shall be given. The order was passed on 12th December 2003. Now this clarification application has been filed. On behalf of the respondents counter affidavit had been filed. In paragraph 8 and 10 it has been stated that the revenue Administration working plan has been prepared and according to the plan the Administration is trying his best to take the prior approval for the continuity according to the availability of the revenue work on the basis of the approval.

According to the aforesaid working plan the petitioners are being appointed from the seniority list on the post of Seasonal Collection Amins after getting the approval form the Commissioner.

It has been pointed out that all the petitioners have not joined and due to which the work of revenue recovery is not running in good position.

In view of aforesaid statement made in the counter affidavit the petitioners are directed to joint immediately and to start the revenue recovery work. In case the petitioners join the posts, after joining it is expected that no artificial break shall be given.

Subject to the above observation, the modification/clarification is disposed of.

(Rajesh Tandon, J.)

ISB

IN THE HIGH COUR OF UTTARANCHAL

AT NAINITAL

Writ Petition No. 1433 (S/S) 2003

1. Bilal Ahamad S/o Sri Safaquat Ahmad
   R/o Village Manak Majra
   P.O. Hallu Majra, Tehsil Roorkee District Haridwar
2. Mam Chand Verma S/o Sri Elam Chand
   R/o House No. 198
   Old Tehsil Roorkee
   District Haridwar
3. Om Prakash S/o Sri Mohar Singh
   R/o 325/8 Civil Lines Roorkee
   District Haridwar
4. Som Dutt S/o Sri Banarsi Dass
   R/o Village Masasi Kalan
   Post Khas Tehsil Roorkee
   District Haridwar
5. Ravindra Kumar S/o Sri Om Dutt Sharma
   R/o Village Khar Jat
   Post Khas, Tehsil Roorkee
   District Haridwar
6. Tribhuwan Kishor S/o Sri Sewa Ram Sharma
   R/o Village Khar Jat
   Post Khas, Tehsil Roorkee
   District Haridwar
7. Mukesh Kumar S/o Sri Hari Ram
   R/o 307 Chaw Mandi
   Tehsil Roorkee District Haridwar
8. Mohd. Nadeem S/o Sri Mohd. Shamin
   R/o Mohalla Kila Manglore
   District Haridwar
9. Adesh Kumar S/o Molhar Singh Tyagi
   R/o Village Tejpur
   Post Najal, Tehsil Dewband
   District Saharnpur
10. Deepak Kumar S/o Sri Jal Bhagwan Gupta
    R/o Mohalla Rajputana
    Roorkee
    District Haridwar
11. Rakesh Kumar S/o Sri Jai Bhagwan
    R/o fVillage Rohalki Kishanpur
    Tehsil & District Haridwar
12. Mallu Singh S/o Sri Sukh Ram Singh
    R/o Vilalge Alipur Post Bahadrabad
    Tehsil & District Haridwar

13. Vimla Ram S/o Late Sri Chinta Mani
R/o A-150/2/1 B.H.E.L. Ranipur
Haridwar ……..Petitioner.

Versus

1. State of Uttar Pradesh through
Secretary, Revenue
Government of Uttaranchal
Secretariat Dehradun
2. Commissioner, Garhwal Division at Pauri
(Pauri Garhwal)
Uttaranchal
3. District Magistrate/Collector
District Haridwar
Uttaranchal ……..Respondents

Date 12.12.2003

Hon'ble Rajesh Tandon, J.

Heard leaned counsel for the petitioners Sri S. Dhulia and leaned counsel for the respondents.

By the present writ petition the petitioners have prayed for the issue of a writ order or direction in the nature of certiorari quashing the order dated 07.11.2003.

Brief facts giving rise to the present writ petition are that the petitioners were initially appointed as Collection Amins between 1981-1991 in the District Haridwar. The details of the appointment as Collection Amins are given below:-

S.N.	Name	Date of Birth	Tehsil	Date of initial appointment
1.	Bilal Ahamad	03.03.1952	Roorkee	14.01.1981
2.	Mam Chand Verma	21.01.1956	Roorkee	02.07.1983
3.	Om Prakash	01.07.1958	Roorkee	27.01.1986
4.	Som Dutt	06.09.1967	Roorkee	05.02.1987
5.	Ravindra Kumar	04.10.1959	Roorkee	25.01.1990
6.	Tribhuwan Kishoe	01.07.1965	Roorkee	25.01.1990
7.	Mukesh Kumar	20.07.1960	Roorkee	25.01.1990
8.	Mohd. Nadeem	01.05.1962	Roorkee	25.01.1990
9.	Adesh Kumar	01.11.1963	Roorkee	25.01.1990
10.	Deepak Kumar	28.02.1970	Roorkee	13.06.1991

	Gupta			
11.	Rakesh Kumar	01.09.1963	Roorkee	08.07.1987
12.	Mallu Singh	01.09.1963	Haridwar	02.02.1991
13.	Vimal Ram	26.04.197	Haridwar	27.07.1991

The petitioners have stated that in District Haridwar there are at present 56 substantive posts of Collection Amins. On the aforesaid posts of Collective Amins at present 44 Collection Amins are working. The remaining 12 substantive posts have not been filled as yet by way of regular appointments. All the present petitioners, have been working as Regular Collection Amins on the aforesaid regular substantive vacancies and therefore they are wrongly called as "Seasonal Collection Amins."

The petitioners have further submitted that they have moved the writ petition before the Allahabad High Court and the following stay order was passed on 11.06.1992:-

"Learned Standing Counsel is granted one month's time to file a counter affidavit.

List thereafter.

Until further orders the petitioner will be continued in service and paid salary regularly."

Subsequently the aforesaid order was confirmed on 06.05.1993.

The petitioners have stated that no break is being given in the service of the petitioners are they are continuously working for the entire 356 days (except the regular holidays).

The petitioners have stated that all of a sudden without hearing them their services have been terminated by the District Magistrate, Haridwar on the following grounds:-

अतः माननीय उच्च न्यायालय, नैनीताल के आदेष दिनांक 14.8.2002 के अनुपालन में आयुक्त माहोदय ने सीजनल स्टाफ के पदों की स्वीकृत होने एवं वसूली हेतु पर्याप्त माग प्राप्त होने तक उपरोक्त समय 13 सीजनल संग्रह अमीनो को सेवा पृथक किया जाता है।''

The petitioners have further stated that they have cased to continue as Seasonal Collection Amins on 7.11.2003.

His Lordship Hon'ble Mr. Justice P.C. Verma in writ petition No. 267/2001 on 14.8.2002 was pleased to pas the following orders:-

"However it is provided that the case of the applicants shall be reconsidered for regular appointment under 35% quota ignoring the earlier rejection order and those Collections Amins who ae workding under the High Court orders shall be ceased to work, if there is no sanction of the Commissioner and no work is available."

Standing counsel has produced a copy of the order dated 9.12.2003 passed by District Magistrate, Haridwar with following effect:-

''महोदय

कृप्या उपरोक्त विषयक रिट याचिका संख्यां 1433 एल एस एस स0 549/2003 बिलाल अहमद पुत्र शलकत अहमद व अन्य – 12 बनाम सरकार उत्तरॉचल देहरादून एवं अन्य में माननीय न्यायमूर्ति जी राजेष टण्डन मा0 उच्च न्यायालय नैनीताल में दायर याचिका में पारित आदेष दिनांकित 3.12.2003 के अनुपालन में अवगत करना है कि माननीय न्यायमूर्ति श्री पी0सी0 वर्मा उच्च न्यायालय नैनीताल उत्तरॉचल मे दायर अवमानना याचिका संखया 267/2001 दिनेष कुमार व अन्य बनाम हरिषचन्द्र जोषी व अन्य में दिनॉक 14.8.2002 को आदेष परित किये गये है कि ''

"Those Collection Amins who are working under the High Court orders, shall be ceased to work, is there is no section of the Commissioner and no work is available.

उपरोक्त मा0 उच्च न्यायालय के आदेषों के अन्तर्गत 13 सीजलन संग्रह अमीनो को आमुक्त गढ़वाल मण्डल से सीजलन स्टाफ के पदो की स्वीकृति प्राप्त हो गई है । संलग्न आदेषो में उल्लखित सीजनल संग्रह अमीनों जिन्हें सेवा से पृथक किया गया है को सीजनल संग्रह अमीन के पद पर तैनामी की जा रही है ।

The petitioners apprehend that the respondents will give artificial breaks, the apprehensions of the petitioners are wholly misconceived as Article 21 of the Constitution of India safeguards the status of the employees from being harassed. Right of hearing being Constitutional

mandate the respondents will give sufficient opportunity to the petitioners if any prejudicial orders are passed against them.

In the case of Smt. Maneka Gandhi Vs. Union of India and another, AIR 1978 SC 597, the Apex Court has observed as under:-

"it is well established that even where there is no specific provision in a statue or rules made thereunder for showing cause against action proposed to taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied form the nature of the function to be performed by the authority which has the power to take punitive or damaging action."

"In England, the rule was thus expressed by Byles, J. In Cooper Vs. wandsworth Board of works: (1863) 14 CB (NS) 180:

"The laws of God and man both give the party an opportunity to make his defence, it he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adman before he was called upon to made his defence. Adm (says God), "Where art thou? Hast thou not eaten of the tree whereof I commanded the that thou shouldest not eat." And the same question was put to Eve also."

The Judgment in the case of Menka Gandhi (Supra) has been following in the case of West Bengal Electricity Regulatory Commission Vs. C.E.S.C. Ltd. Jt. 2002(7) SC 578, relying upon the case of Mrs. Maneka Gandhi Vs. Union of India and another, 1978(1) SCC 248 as under:-

"The right of audi alterm partem is a valuable right recognized even under the India Constitution. See Mrs. Menka Gandhi Vs. Union of India and another, 1978(1)SCC 248 wherein it is held, the principle of the maxim which mandates that no one should be condemned unheard; is a part of rule of natural justice. We have already held that such right of hearing conferred by a Statue cannot be taken away even by courts."

Counsel for the petitioners have pointed out that discriminatory treatments are being given with Seasonal Collection Amins, suffice it to state that our Constitution safeguards the employees by virtue of such Article 38 and Article 39 (a) of the Constitution of India. It reads as under:-

38-State to secure a social order for the promotion on welfare of the people –[(1)[Article 38 renumbered as clause (1) thereof by the Constitution (Forty-Fourth Amendment) Act, 1978, sec.9(w.e.f. 20-6-1979)] The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life." [(2)Ins. By the Constitution (Forty-fourth Amendment) Act, 1978, sec 9(w.e.f. 20-6-1979)] The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engages in different vocations.] "

Article 39(a) further provides as under:-

"39-Certain principles of policy to be followed by the State-The State shall, in particular, direct its policy towards securing-

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood."

In D.S. Nakara Vs. Union of India reported in 1983 SC 130, following the judgment in Minerva Mills Ltd. Vs. Union of India(1981) 1 SCR 206: (AIR 1980SC 1789) speaking for the majority, Chandrachud, C.J. It has been held as under:-

"This is not mere semantic. The edifice of our Constitution is built upon the concepts crystallized in the Preamble. We resolved to constitute ourselves into a Socialist State which carried with it the obligation to secure to our people justice – social, economics and political. We, therefore, put Pat IV into our Constitution constraining directive principles of State Policy which Specify the socialistic goal to be achieved.

At a later stage, it was observed; that fundamental rights are not an end in themselves but are the means to an end, the end

is specified in Part IV. Bhagwani, J. in his minority judgment after extracting a portion of the speech of the them Prime Minister Jawahar Lal Nehru, while participating in a discussion on the Constitution (First Amendment) Bill, observed that the Directive Principles are intended to bring about a socio-economic revolution and to create a new socio-economic order where there will be social and economic justice for all and everyone, not only a fortunate few but the teeming millions of India, would be able to participate in the fruits of freedom and development and exercise the fundamental rights. It, therefore, appears to be well established that while interpreting or examining the constitutional validity of legislative/administrative action, the touchstone of Directive principles of State Policy in the light of the Preamble will provide a reliable yardstick to hold one way or the other."

The Apex Court held in the case of Kapila Hingorani Vs State of Bihar(S.C) regarding the rights guaranted under the Constitution of India. The following observations are quoted below:-

Paragraph -39 "Parts III and IV of the Constitution of India contain a large number of rights which guarantee human rights, some of which are akin to the rights enumerated in International Treaties and Chapters. Article 11 of International Covenant in Economics, Social and Cultural Rights, 1996 reads thus:

(1) The States Parties to the present Covenant recognize the right of everyone to an adequate standards of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognize to this effect the essential importance of international co-operation based on free and consent.

(2) The State Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take individually and through international

co-operation, the measures, including specific programmers, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources."

Paragraph -50 "The term 'life' used in Article 21 of the Constitution of India has a wide and far reaching concept. It includes livelihood and so many other facts thereof. "Life", as observed by Filed, J.in Munn V. Illinois [1877(94)US 113] means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. [See Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and others[1983(1) SCC 124] and Olga Tellis and others VS. Bombay Municipal Corporation and others [1985(3) SCC 545]."

In view of the aforesaid facts, the petitioners having already granted the sanction from the Commissioner the impugned order dated 07.11.2003 stands recalled automatically.

In view of the facts stated above since the sanction for seasonal Collection Amins have already been made in favour of the petitioners, the writ petition is disposed of in terms of prayer no. 1.

Since the petitioners are regularly working and there is a sanction for the said post, there is no reason by the respondents to interfere in the working of the petitioners by the respondent.

In view of the aforesaid facts and circumstances respondents are directed to formulate the scheme to take work regularly form the Seasonal Collection Amins under the Constitutional mandate as contained Article 38 and 39(a) of the Constitution of India so as not to deprive their regular bread and butter.

Consequently, subject to the aforesaid observations, writ petition is disposed of. There will be no order as to costs.

(Rajesh Tandon, J.)

Dated. 12.12.2003
Mohit